

Appeal from decision of the Nevada State Office, Bureau of Land Management, rejecting desert land entry application N 30370.

Affirmed.

1. Desert Land Entry: Applications -- Desert Land Entry: Water Right

A desert land entry application is properly rejected where the applicant's water permit application has been canceled by the State water authority, since a desert land entry application without evidence of a water right must be rejected.

APPEARANCES: Beth O. Prince, pro se.

OPINION BY ADMINISTRATIVE JUDGE FRAZIER

Beth O. Prince has appealed from the December 8, 1983, decision of the Nevada State Office, Bureau of Land Management (BLM), rejecting her desert land entry application N 30370 because she had not proceeded as far as possible in acquiring a right to water for irrigation of her entry. 1/

1/ The return receipt card evidencing delivery of the decision was signed on Jan. 3, 1984. The notice of appeal was due to be filed on Feb. 2, 1984; however, it was not received until Feb. 8, 1984. 43 CFR 4.401(a) provides: "Grace period for filing. Whenever a document is required under this subpart to be filed within a certain time and it is not received in the proper office during that time, the delay in filing will be waived if the document is filed not later than 10 days after it was required to be filed and it is determined that the document was transmitted or probably transmitted to the office in which the filing is required before the end of the period in which it was required to be filed."

The envelope which contained the notice of appeal was not placed in the file, thus, we are unable to establish the exact date of mailing. The notice of appeal does, however, reflect a transmittal date of Jan. 20, 1984. While the notice of appeal was probably not transmitted on that date, we find that it was probably transmitted prior to Feb. 2, 1984. Under the circumstances of this case, we find it appropriate to apply 43 CFR 4.401(a), and to waive the delay in filing. 43 CFR 4.411(b).

[1] In Robert E. White, 82 IBLA 34 (1984), we affirmed a rejection of desert land entry applications under circumstances virtually identical to those raised in the instant appeal. In that decision, we noted that the Desert Land Act provides for entry of desert lands for the purpose of reclaiming them "by conducting water upon the same * * * Provided, however, That the right to the use of water by the person so conducting the same * * * shall depend upon bona fide prior appropriation." 43 U.S.C. § 321 (1982) (emphasis in original). A pertinent regulation, 43 CFR 2521.2(d), provides:

No desert-land application will be allowed unless accompanied by evidence satisfactorily showing either that the intending entryman has already acquired by appropriation, purchase, or contract a right to the permanent use of sufficient water to irrigate and reclaim all of the irrigable portion of the land sought, or that he has initiated and prosecuted, as far as then possible, appropriate steps looking to the acquisition of such a right * * *.

These requirements were sustained in United States ex rel. Faull v. Ickes, 82 F.2d 879 (D.C. Cir. 1936). The Department has consistently held that a desert land entry application without evidence of a water right must be rejected. James Neil Fletcher, 78 IBLA 330, 331 (1984), and cases cited therein.

An attachment to appellant's application indicated that the land would be supplied by water under permit application 39521, issued by the Nevada Water Department. However, amended application 39521 was returned to a Mr. John P. Stovall (an individual named in appellant's application as assisting in its preparation) by the Nevada State Engineer, Department of Conservation and Natural Resources, Division of Water Resources, on July 10, 1980. The letter indicated that a period of 60 days would be allowed for refileing an amended application, but the application would be subject to cancellation if the amended application was not received within 60 days. The case record submitted with this appeal contains a report of a telephone conversation between BLM and the Office of the State Water Engineer whose records are reported to show that permit application 39521 was canceled on September 29, 1980, for failure to file an amended application as requested by the July 10 letter.

Like the appellants in White, supra, appellant contends that her permit application has not been canceled and that she has proceeded as far as possible to acquire the right to appropriate water. However, she has submitted no statement from the State Water Engineer to contradict the report upon which BLM relied. In White, supra at 36, we noted that although appellant may have proceeded as far as possible to acquire the right to appropriate water at the time the desert land application in question was filed, the subsequent cancellation of her water permit application rendered the desert land application subject to rejection. We further noted, however, that such rejection would not prejudice appellant's right to file a new application with evidence of newly initiated efforts to obtain sufficient water rights.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Gail M. Frazier
Administrative Judge

We concur:

C. Randall Grant, Jr.
Administrative Judge

R. W. Mullen
Administrative Judge